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SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34004

CANADIAN PACIFIC RAILWAY COMPANY AND
NAPIERVILLE JUNCTION RAILWAY COMPANY–
CORPORATE FAMILY TRANSACTION EXEMPTION–
ST. LAWRENCE & HUDSON RAILWAY COMPANY LIMITED.

Decided: February 26, 2003

We are denying a petition to reopen this proceeding that was filed by a former employee of Canadian Pacific Railway Company (CPR).

A notice of exemption that was served and published in this proceeding on February 16, 2001 (66 FR 10770), authorized CPR and Napierville Junction Railway Company to absorb the St. Lawrence & Hudson Railway Company Limited and its assets back into CPR, its parent corporation (CPR/St.L&H transaction). The notice imposed the employee protection conditions set forth in New York Dock Ry.–Control–Brooklyn Eastern Dist., 360 I.C.C. 60 (1979) (New York Dock), for the benefit of U.S. railroad employees.

Karen Cline (petitioner), who had been employed in CPR's border services office in Detroit, MI, filed a petition to reopen this proceeding on August 19, 2002. Petitioner requests that we impose oversight to ensure that CPR is complying with the New York Dock conditions imposed in the CPR/St.L&H transaction. In the petition, Ms. Cline states that CPR notified all U.S. customs and border services employees in Detroit on October 15, 2001, that it intended to relocate their work to Winnipeg, Manitoba, Canada, effective February 1, 2002. The notice stated that all positions in Detroit would be abolished and that 4 positions would be established in Winnipeg to perform the work previously performed in Detroit. According to petitioner, CPR issued another notice on January 14, 2002, informing all U.S. employees in Detroit that the relocation was being effected on February 4, 2002, and that employees who wished to transfer to Winnipeg could bid for the new positions. Ms. Cline claims that she lost her job with CPR as a direct result of those actions.

In a letter to CPR dated April 19, 2002, petitioner asserted that her dismissal was caused by the CPR/St.L&H transaction and claimed that she was entitled to New York Dock benefits. In a letter dated May 8, 2002, CPR's counsel rejected petitioner's claim, stating that her dismissal did not result from a Board-regulated transaction, which is a prerequisite for coverage under the New York Dock conditions. Instead, the letter asserted, CPR's reorganization of its border services was an independent decision unrelated to the CPR/St.L&H transaction. In a letter to

Ms. Cline dated July 25, 2002, apparently in response to continued efforts by petitioner to press her claim, CPR reiterated its position that New York Dock benefits were not applicable to the reorganization of its border services. Ms. Cline then filed the instant petition.

In its September 6, 2002 reply to the petition, CPR asserts that petitioner has improperly pursued action before the Board rather than request arbitration as prescribed under the procedures in Article I, section 11 of New York Dock.[1] CPR also states that petitioner is receiving benefits under an implementing agreement that was negotiated with the TC Local 1976, United Steelworkers of America (Union), which apparently represented Ms. Cline and other employees in Detroit. And substantively, the carrier argues that petitioner is not entitled to relief because the elimination of her position in Detroit was not caused by the CPR/St.L&H transaction. CPR views that transaction as merely changing the corporate ownership of three short trackage segments in the United States at border crossings in Detroit, Niagara Falls, NY, and Rouse's Point, NY. The railroad takes the position that the transaction had no impact on petitioner's employment.

CPR says that it notified the Union about the reorganization of its operations on October 15, 2001, and that it also informed the Union that New York Dock labor protection was not available for affected employees. According to CPR, the Union dropped claims for New York Dock protection and proceeded to negotiate an implementing agreement that would entitle employees displaced by the border services reorganization to receive either a lump sum separation payment based on years of service or a supplemental unemployment allowance that

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[1] Article I, section 11 of New York Dock provides, as pertinent:

> 11. Arbitration of disputes.—(a) In the event the railroad and its employees or their authorized representatives cannot settle any dispute or controversy with respect to the interpretation, application or enforcement of any provision of this appendix, except sections 4 and 12 of this article I, within 20 days after the dispute arises, it may be referred by either party to an arbitration committee* * * .
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> (e) In the event of any dispute as to whether or not a particular employee was affected by a transaction, it shall be his obligation to identify the transaction and specify the pertinent facts of that transaction relied upon. It shall then be the railroad's burden to prove that factors other than a transaction affected the employee.

included health and welfare coverage. An implementing agreement was signed on January 21,2002.[2]

On September 24, 2002, CPR informed us that it received a letter from petitioner dated September 5, 2002, requesting that the dispute be referred to arbitration under New York Dock.[3] The carrier contends that this request is untimely. The railroad asserts that Ms. Cline was aware of CPR's denial of her claim months earlier, but failed to seek arbitration within 20 days after the dispute arose. Instead, she sought relief directly from the Board.

As indicated, in a reply filed on September 30, 2002, and supplemented on November 7, 2002, petitioner says that the reason she wants the Board to impose oversight in this proceeding is to ensure that CPR follows the arbitration procedures in New York Dock. Petitioner states that she initially attempted to resolve her claim by corresponding with CPR, but is now seeking arbitration. She also disputes CPR's assertion that the 20-day time limit for seeking arbitration under New York Dock has expired and claims that CPR has attempted to evade its obligations under the New York Dock conditions.

DISCUSSION AND CONCLUSIONS

Ms. Cline originally requested that we reopen this proceeding and impose oversight to ensure that the previously imposed New York Dock procedures were being properly implemented. CPR objected, arguing that petitioner had failed to pursue her claims before an arbitrator, as required by those procedures. Petitioner has now formally requested arbitration of her claim.

Both parties thus appear to be in agreement that petitioner's claim that she is eligible for the New York Dock benefits imposed in the CPR/St.L&H transaction should be addressed initially through the arbitration process. In light of this, there is no need for us at this time to grant Ms. Cline's request that we impose oversight in this proceeding. Rather, the matter should be referred to an arbitrator, who can address the parties' arguments, including CPR's claim that

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[2] CPR indicates that, on March 8, 2002, petitioner signed a letter accepting benefits under the implementing agreement, and is currently receiving a monthly allowance of $1,470.59 and "benefit plan coverage." Ms. Cline apparently will continue to receive these benefits through late 2004.

[3] We will grant CPR's Motion to Supplement the Record and accept this supplemental filing.

petitioner's request to submit the dispute to arbitration was filed too late and the merits of Ms. Cline's claim, if appropriate.[4]

After entry of an arbitral award, either party may appeal the arbitrator's decision to us if it can satisfy the standards for review of arbitration awards set forth in Chicago & North Western Tptn. Co.-Abandonment, 3 I.C.C.2d 729 (1987) (Lace Curtain), aff'd sub nom. International Broth. Of Elec. Workers v. ICC, 862 F.2d 330 (D.C. Cir. 1988).

In light of the above, we will deny the petition to reopen this proceeding.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. CPR's Motion to Supplement the Record is granted.

2. The petition to reopen this proceeding is denied

3. This decision is effective on its date of service.

By the Board, Chairman Nober, Vice Chairman Burkes, and Commissioner Morgan.

Vernon A. Williams
Secretary

[4] On January 28, 2002, the Transportation•Communications International Union (TCU) filed a petition seeking leave to intervene in this proceeding. TCU does not represent Ms. Cline and takes no position on the merits of Ms. Cline's claim. Rather, it is seeking to intervene solely to respond to CPR's assertion that petitioner's claim was untimely. This issue will initially be addressed by an arbitrator, and we need not consider TCU's intervention request at this time.